IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 76 of 1998 with Cross-objection No.186/98.

RFA No.109 of 1998 with Cross Objection No. 177/98.

RFA No. 61 of 1998 with Cross Objection No.168/98.

and

RFA No. 86 of 1998 with Cross Objection No.167/98.

Judgement reserved on: 4.10.2007.

Date of decision: 19.11.2007.

(For title, please see reverse)

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The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr.K.D.Shreedhar, Advocate with Mr. Rajnish Maniktala, Advocate.**

For the Respondents : **Mr. M.S.Chandel, Advocate General with Mr. M.L.Chauhan, Additional Advocate General, for respondents State of H.P. and Collector, Land Acqusition (In all appeals).**

Mr. Jagan Nath, Advocate vice Mr. Anand Sharma, Advocate for other respondents.

(In all appeals) .

Kuldip Singh, Judge.

This judgement shall dispose of RFA No. 76 of 1998 with Cross Objection No. 186 of 1998, RFA No. 109 of 1998 with Cross Objection No. 177 of 1998, RFA No. 61 of 1998 with Cross Objection No. 168 of 1998 and RFA No. 86 of 1998 with Cross Objection No. 167

Whether the reporters of the local papers may be allowed to see the Judgment?

of 1998, which have been filed against common, award, dated 1.11.1997, passed by the learned District Judge, Chamba, in Land Reference Case Nos. 5, 2, 8 and 29 of 1994, respectively.

2. The facts in brief are that State of H.P. for acquiring land for Chamera Dam Reservoir in Mohal Rajnagar, Pargana Rajnagar, Tehsil and District Chamba, issued Notification, under Section 4 of the Land Acquisition Act, 1894 (for short, the Act), which was published on 6.6.1992. The Land Acquisition Collector (for short, the Collector) announced the award on 31.7.1993. The following are the details of lands, structures and compensation awarded by the Collector, as shown in para-3 of the impugned award:-

Sr. No.	**Case No. and title of the petition.**	**Area of land acquired.**	**Amount of compensation awarded.**
1.	5/94, Hem Singh Vs. NHPC etc.	1-9-0 Structures	44,216/- 44,511/-
2.	2/94 Ranbir Singh Vs. NHPC etc.	1-9-0 Structures	44,217/- 4,785/-
3.	8/94 Kuldeep Singh Vs. NHPC etc.	1-9-0 Structures	44,216/- 32,871/-
4.	29/94, Sumitra etc. Vs. NHPC etc.	3-5-19 Structures	84,425/- 8,306/-

3. The Collector awarded compensation at different rates in respect of different kinds of lands. Some of the land owners were aggrieved by the compensation awarded by the Collector, therefore,

they preferred reference petitions, under Section 18 of the Act. The learned District Judge, enhanced the compensation as follows:-

Sr. No.	Case No. and title of the petition.	Compensation awarded by Collector.	Awarded by the court.	Net amount of enhanced compensation
1.	5/94, Hem Singh Vs. NHPC etc	Land: 44,216/- Structures: 44,511/-	64,013/- 66,766/-	19,897/- 25,255/-
2.	2/94 Ranbir Singh Vs. NHPC etc	Land 44,217/- Structures : 4,785/-	64,014/- 7,177/-	19,897/- 2,392/-
3.	8/94 Kuldeep Singh Vs. NHPC etc.	Land: 44,216/- Structures: 32,871/-	64,013/- 49,306/-	19,897/- 16,435/-
4.	29/94, Sumitra etc. Vs. NHPC etc.	Land 84,425/- Structures: 8,306/-	1,22,416/- 12,459/-	37,991/- 4,153/-

4. Chamera Hydroelectric Project has filed the above appeals against the impugned award. The land owners have also filed Cross Objection No. 186 of 1998 in RFA No. 76 of 1998, Cross Objection No.177 of 1998 in RFA No. 109 of 1998, Cross Objection No. 168 of 1998 in RFA No. 61 of 1998 and Cross Objection No. 167 of 1998 in RFA No. 86 of 1998.

5. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellants has submitted that the learned District Judge has awarded excess compensation to the land owners. The sale deed Ex. PW 2/B dated 4.2.1988 has been wrongly relied, sale deeds Ex. PW 2/A dated 15.1.1991, Ex. R-1 dated 2.7.1993 and Ex. R-2 dated 9.7.1992,

mutation No. 993 Ex. DX and mutation No. 1041 Ex. DY have been wrongly excluded for assessing the market value of the acquired land. Fifty percent increase for the structures has been wrongly awarded. The District Judge has misconstrued, misinterpreted the material on record and has erred in enhancing the compensation over and above what was awarded by the Collector. The learned counsel representing the land owners has supported the impugned award. In Cross Objection No. 186 of 1998 in RFA No. 76 of 1998, Cross Objection No.177 of 1998 in RFA No. 109 of 1998, Cross Objection No. 168 of 1998 in RFA No. 61 of 1998 and Cross Objection No. 167 of 1998 in RFA No. 86 of 1998 it has been submitted that less compensation has been awarded to the land owners. The land owners are entitled to enhancement of compensation, as claimed by them in respective cross objections.

6. The learned District Judge on the basis of sale deed Ex. PW 2/A dated 4.2.1988 after allowing 60% deduction has assessed the market value of Barani Awal land at Rs. 40,000/- per bigha, as against Rs. 27,590/- awarded by the Collector for Barani Awal land. The learned District Judge has also accordingly allowed 45% increase for other types of acquired lands over and above what was assessed by the Collector for those types of lands. The learned District Judge has assessed market value of the structures 50% over and above what has been awarded by the Collector, keeping in view the fact that market value of the structures was assessed on the basis of 1987 schedule of rates, whereas the structures were acquired vide notification dated 6.6.1992, issued under Section 4 of the Act.

7. PW 1 Hem Singh has stated that his land and house were situated in Mohal Rajnagar, village Thari, which have been acquired by Chamera Dam Authorities. There were fruit and non fruit trees, poultry farm, water mill, Kohlu etc. on the acquired land, which have also been acquired. They were four or five co-sharers. They had been given less compensation. The market value of the land was Rs.1,50,000/- per bigha. The compensation of the trees has been paid as per 1966 rates, for houses as per 1986 rates and for timber as per 1986 rates. He has further stated that in their village they were having facilities of water, electricity, schools and hospital and village was situated on main road at a distance of 20 kilometers from Chamba town.

8. PW 2 Gurdevi, Registration clerk has placed on record certified copies of sale deeds Ex. PW 2/A and Ex. PW 2/B. PW 3 Hardyal has stated that as per sale deed Ex. PW 2/B, he has sold his two biswas land in Rajnagar Mohal to Chafar for Rs. 10000/-. PW 4 Sahab Singh has stated that as per sale deed Ex. PW 2/A, he has sold 3 biswas land in Pargana Rajnagar to Tilak Singh for a consideration of Rs. 12,000/-. PW 5 Shrikanth, Sr. Assistant, HP Forest Corporation has placed on record Ex. PW 5/B, dated 9.6.1987 fixing the sale price of timber to non right holders from depots of forest department alongwith Annexure-I Ex. PW 5/A. He has also placed on record Ex. PW 5/C, dated 1.8.1992 fixing rates of timber for non right holders. Similarly, he has placed on record Ex. PW 5/D dated 26.10.1992 fixing rates of timber for non right holders, Ex. PW 5/E dated 17.4.1993 fixing rates of timber for non right holders. PW 6 Rajinder Singh Chauna has stated that he retired in February 1996 as Assistant Engineer, HPPWD,

Chamba. He worked in Chamera, Surgani and Bairasul Projects. He prepared Ex. PW 6/A depreciated value of house of Hem Singh, which is based upon estimate Ex. PW 6/B. In Ex. PW 6/B the base is 1987 HPPWD schedule of rates. In the like manner, he prepared depreciated value of the house of Ranvir Singh, which is Ex. PW 6/C. The depreciated value of the house of Ranvir Singh Ex. PW 6/C is based upon Ex. PW 6/D. In the same manner, he prepared depreciated value of the house of Kuldip Singh, which is Ex. PW 6/E and based upon estimate Ex. PW 6/F. In cross-examination, he has stated that he took the rates while preparing the analysis from the market. The land owners have tendered in evidence "Naksha Bartan Haq" Ex. PZ, copies of objections under Section 9 Ex. PZ/1 and Ex. PZ/2 as well as copies of jamabandies Ex. PX and Ex. PY. On behalf of Project Authorities, copies of mutations Ex. DX and Ex. DY were placed on record.

9. RW 1 Bahadur Singh Assistant Grade II has stated that Hem Singh, Kuldeep Singh were given houseless and landless grant, Ranvir Singh was granted landless grant and no grant was given to Lachho. The Project Authorities tendered in evidence sale deeds Ex. R-1 and Ex. R-2. This is the evidence led by the parties.

10. The counsel for the appellant has submitted that learned District Judge has erred in relying sale deed Ex.PW 2/B dated 4.2.1988, according to him this sale deed is of 2 biswas of land, which is a small area in comparison to large area acquired for the reservoir. He has submitted that small area transaction cannot be relied for assessing the market value of the large area. The sale deed Ex. PW

2/B was executed on 4.2.1988 and the notification under Section 4 of the Act for acquiring the land was issued on 6.6.1992.There is nothing on record to show that sale deed Ex.PW 2/B is not a genuine transaction. There is also nothing on record to show that the sale deed Ex. PW 2/B was executed to enhance the market value of the acquired land. PW 3 Hardyal Singh vendor of the sale deed Ex. PW 2/B has proved the sale deed. The sale deed Ex. PW 2/B is of Mohal Rajnagar where the acquired land is situated. Thus sale deed Ex. PW 2/B is a genuine transaction.

11. The learned District Judge has given reasons for not relying sale deed Ex. PW 2/A dated 15.1.1991 vide which PW 4 Sahab Singh has sold 3 biswas land in village Thari, Pargana Rajnagar to Tilak for a consideration of Rs. 12,000/- The sale deed Ex. R-2 dated 9.7.1992 and sale deed Ex. R-1 dated 2.7.1993 relied by the appellant were executed after 6.6.1992 when notification under Section 4 of the Act for acquiring the land was already issued. The appellant has also relied mutation No. 993 Ex. DX and mutation No. 1041 Ex. DY for assessing the market value of the acquired land. There is no evidence on record to show that lands covered by sale deeds Ex. R-2, Ex. R-1, mutations Ex. DX and Ex. DY are comparable with the acquired land. Therefore, sale deeds Ex. R-2, Ex. R-1 and mutations Ex. DX and Ex. DY have been rightly not relied by the learned District Judge for assessing the market value of the acquired land.

12. Now only sale deed Ex. PW 2/B dated 4.2.1988 is left on record for assessing the market value of the acquired land. The objection of the learned counsel for the appellant is that this sale deed

is of small area and therefore, it cannot be relied for assessing the market value of the large area. In **Ravinder Narain and another** vs. **Union of India** [2003 (4) SCC 481], the Hon'ble Supeme Court in para-7 has held as follows:-

> "It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions / adjustments have to be made while determining the prices."

13. In **Basavva (Smt) and others** vs. **Spl. Land Acquisition Officer and others** [1996 (9) SCC 640], the Hon'ble Suprekme Court has held as follows:-

> "In Vasundara Devi case 63% deduction was upheld. In view of the fact that development of land would have taken years, the High Court has deducted another 12%. Obviously the High Court kept in view the fact that the lands under Ex. P-10 were situated at far flung places from the lands under acquisition and since the land takes long time for development it has given additional deduction of 12% i.e. 53 + 12% = 65% in determination of the compensation. On the basis of rationale referred to above, the principle adopted by the High Court cannot be said to be illegal."

In the present case, the learned District Judge has assessed the market value of the acquired land on the basis of Ex. PW 2/B sale deed at Rs. 1,00,000/- per bigha and after allowing 60% deduction ultimately assessed the market value of the acquired land at Rs. 40,000/- per

bigha of Barani Awal as against Rs. 27,590/- of such land assessed by the Collector. Once the learned District Judge has assessed the market value of the Barani Awal land 45% above the market value assessed by the Collector of such land, therefore, he allowed 45% increase to other types of lands over and above what was assessed by the Collector for such types of lands. In view of law laid down by the Apex Court referred to above, no fault can be found in the assessment made by learned District Judge, when he assessed the market value of the acquired land on the basis of sale deed Ex. PW 2/B after making 60% deduction.

14. It has been submitted by the learned counsel for the appellants that learned District Judge has erred in enhancing the market value of structures by 50%. It has not been denied that market value of the structures was assessed on the basis of 1987 schedule of rates. The acquisition was done vide notification dated 6.6.1992. It is known fact that there is general trend of increase in the costs of construction. The learned District Judge for assessing the market value of the structures has given 50% increase on 1987 schedule of rates. The structures were acquired vide notification dated 6.6.1992, under Section 4 of the Act. Therefore, in my opinion, 50% increase allowed by the learned District Judge for the structures is just and reasonable. Moreover, the State has acquired lands in different Mohals for Chamera Dam Reservoir vide different notifications issued under Section 4 of the Act. In many cases, the structures were also acquired and the assessment was made for acquiring the structures on the basis of 1987 HPPWD schedule of rates. In reference petitions under

different awards, the reference court has given 50% increase for the structures mainly on the ground that the structures were acquired in or about the year 1992-93, whereas, structures were assessed on the basis of 1987 HPPWD schedule of rates. Fifty percent increase for structures has been upheld by this court in many appeals, such as RFA No. 72 of 1998 alongwith connected matters decided on 30.5.2007, RFA No. 127 of 1998, decided on 1.6.2007, RFA No. 83 of 1998 and RFA No. 78 of 1998 decided on 26.7.2007, RFA No. 65 of 1998 and other connected matters, decided on 28.9.2007.

15. In the cross objections, the land owners have claimed market value of the acquired land at Rs. 90,000/- per bigha. It has been submitted that learned District Judge has erred in allowing 60% deduction from the market value assessed on the basis of sale deed Ex. PW 2/B. The land covered under sale deed Ex. PW 2/B is of small area measuring 2 biswas in comparison to acquired land. In RFA No. 72 of 1998 and other connected matters decided on 30.5.2007, this court has already upheld the principle adopted by the leaned District Judge for assessing the market value of the land after allowing deduction. In RFA No. 72 of 1998, the notification under Section 4 of the Act was issued on 6.6.1998 for acquiring the land and structures for Chamera Reservoir in Mohal Rajnagar itself. The judgement rendered in RFA No. 72 of 1998 is fully applicable in the present case, and, therefore, the land owners are not entitled to any enhancement of compensation for the lands and structures acquired.

16. The land owners by way of cross objections have also submitted that nothing has been awarded to them for fruit and non fruit

trees, poultry farm, Gharat (water mill) etc, which were existing on the acquired land. The perusal of the impugned award would show that land owners before the learned District Judge put up claim for lands and structures and no claim for fruit, non fruit trees, poultry farm, Gharat (water mill) etc. was raised before the leaned District Judge. In the cross objections, it is not the case of the land owners that they pressed for the compensation before learned District Judge for fruit, non fruit trees, poultry farm, water mill etc. existing on acquired land but that has not been considered or discussed in the impugned award. In these circumstances, it can be safely inferred that land owners had given up/ abandoned their claim for compensation for fruit, non fruit trees, poultry farm, Gharat (water mill) etc. and for other items, which have not been specifically dealt with in the impugned award. In **Dr. Mahesh Chand Sharma Vs. Smt. Raj Kumari Sharma and others** [AIR 1996 SC 869], it has been held that a party who abandons a particular plea at a particulars stage, cannot be allowed to re-agitate in the appeal. In RFA No. 3 of 1998 and other connected matters, decided on 9.8.2007, this court has also taken this view that once a party abandons a particular plea at a particular stage that party cannot be permitted to re-agitate same plea in subsequent stages of that case. In the present case, the cross objectors from their conduct have given up, abandoned their claim for fruit, non fruit trees, poultry farm, Gharat (water mill) etc. by not pressing such claim before the learned District Judge, therefore, now they cannot be permitted to put up these claims in this court. Moreover, there is no worth believing evidence on record to allow compensation to the land owners for fruit, non fruit trees,

poultry farm, Gharat (water mill) etc. The appellants in the appeals and land owners in the cross objections have failed to make out any case for interference in the impugned award. The impugned award is accordingly affirmed.

17. No other point was urged.

18. The result of the above discussion, all appeals being RFA No. 76 of 1998 with Cross Objection No. 186 of 1998, RFA No. 109 of 1998 with Cross Objection No. 177 of 1998, RFA No. 61 of 1998 with Cross Objection No. 168 of 1998 and RFA No. 86 of 1998 with Cross Objection No. 167 of 1998 are dismissed. No costs.

November 19, 2007. **(Kuldip Singh),**
(Hem) **Judge.**

1. **<u>RFA No. 76 of 1998 with Cross Objection No. 186/98.</u>**

Chamera Hydroelectric Project ….. Appellant.

Vs.

Hem Singh & ors. ….. Respondents.

2. **<u>RFA No. 109 of 1998 with Cross Objectin No. 177/98.</u>**

Chamera Hydroelectric Project ….. Appellant.

Vs.

Ranvir Singh & ors. ….. Respondents.

3. **<u>RFA No. 61 of 1998 with Cross Objection No. 168/98.</u>**

Chamera Hydroelectric Project ….. Appellant.

Vs.

Kuldeep Singh & ors. ….. Respondents.

4. **<u>RFA No. 86 of 1998 with Cross Objection No.167/98</u>**

Chamera Hydroelectric Project ….. Appellant.

Vs.

Sumitra & ors. ….. Respondents.